

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX -HEARING OFFICER

Decision Date: April 1, 2002

Decision: MTHO #33

Taxpayer:

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On January 15, 2002, Taxpayer filed with the Municipal Tax Hearing Office its November 13, 2001 letter of protest of the City of Phoenix ("City") tax assessment. After review, the City filed its January 22, 2002 finding that the protest was timely and in the proper form. The protest was processed as a redetermination. On January 28, 2002 the Municipal Tax Hearing Officer ordered the City to file its response on or before March 14, 2002. On February 6, 2002, the City filed its response. On February 11, 2002, the Taxpayer was ordered to file its reply on or before March 13, 2002. On February 17, 2002, the Taxpayer filed its reply.

The Taxpayer experienced a devastating fire in 1998. The fire resulted in Taxpayer being out of business for a considerable amount of time. This also caused considerable turnover of personnel for the Taxpayer. Consequently, the Taxpayer failed to file tax returns with the City for the period November 1999 through September 2000. The City conducted an audit and determined the Taxpayer owed additional taxes in the amount of \$42,485.35 for the period November 1999 through September 2000. In addition the City assessed interest and penalties for late filing and for late payment of taxes. The penalties totaled \$10,621.39. In the protest letter, the Taxpayer requested a waiver of the penalties.

City Position

Phoenix City Code Section 14-540 (b)(1) ("Section 540 (b)(1).") imposes a penalty for the failure to timely file. Phoenix City Code Section 14-540 (b)(2) ("Section 540 (b)(2)") imposes a penalty for failure to pay the tax timely. Each of these penalties can be waived if the Taxpayer violated the sections due to reasonable cause and not due to willful neglect. The City asserted that the Taxpayer's claim that they did not file the returns until someone was available to calculate the liability or that the Taxpayer has experienced trying times is not reasonable cause.

Taxpayer Position

In reply to the City, the Taxpayer reiterated the hardships it had been through. In addition, the Taxpayer took exception to the City's conclusion that the Taxpayer's actions were "willful neglect". The Taxpayer requested special consideration based on its history as a customer with the City as well as the devastating fire and resulting turnover of personnel. For those reasons, the Taxpayer requested the penalties be waived.

ANALYSIS

There is no dispute in the record that the Taxpayer experienced a fire in November 1998 and was out of business for a period

of time. There is also no dispute that the Taxpayer failed to file returns for the period November 1999 through September 2000, although the tax returns were sent to the Taxpayer on a monthly basis. While the Taxpayer asserted the returns were not filed until someone was available to calculate the liability, the Hearing Officer does not find that reason to be a reasonable cause for not returning the tax returns. It would have been a simple matter to return the tax returns with an explanation as to why they were not properly completed.

As to the failure to pay when due, the Hearing Officer finds this to be a different matter. Under the circumstances, it is understandable that a company may have financial difficulties after a devastating fire put them out of business for a period of time. Because of the financial circumstances of the company during the period November 1999 through September 2000, as well as turnover in personnel, the Hearing Officer concludes the Taxpayer had reasonable cause for failing to timely pay its taxes.

Based on all the above, the Hearing Officer denies the Taxpayer's request to waive the penalties pursuant to Section 540 (b) (1) and grants the Taxpayer's request to waive the penalties pursuant to Section 540 (b)(2).

FINDINGS OF FACT

1. On January 15, 2002, Taxpayer filed its November 13, 2001 letter of protest of the City tax assessment.
2. On January 22, 2002, the City concluded the protest was timely and in the proper form.
3. The protest was processed as a redetermination.
4. On February 6, 2002, the City filed its response to the protest.
5. On February 17, 2002, the Taxpayer filed its reply to the City.
6. Taxpayer experienced a fire in 1998, which resulted in Taxpayer being out of business for a considerable amount of time.
7. Because of the fire, Taxpayer had a considerable turnover of personnel.
8. The City sent tax returns to the Taxpayer on a monthly basis for the period November 1999 through September 2000.
9. Taxpayer failed to timely file tax returns with the City for the period November 1999 through September 2000.
10. The City conducted an audit and determined the Taxpayer owed additional taxes in the amount of \$42,485.53 for the period November 1999 through September 2000.
11. The City assessed interest and penalties for late filing and late payment of taxes.
12. The penalties totaled \$10,621.39.
13. Taxpayer requested a waiver of the penalties.
14. Taxpayer failed to timely pay taxes due for the period November 1999 through September 2000.

CONCLUSIONS OF LAW

1 Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.

2. Section 540 (b)(1) imposes a penalty for failure to file a timely return unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.

3. Section 540 (b)(2) imposes a penalty for failure to pay the tax timely unless the taxpayer shows that the failure is due to

reasonable cause and not willful neglect.

4. Under the circumstances discussed herein, the Taxpayer did not demonstrate reasonable cause for failure to file timely returns for the period November 1999 through September 2000.

5. Under the circumstances discussed herein, the Taxpayer did demonstrate reasonable cause for failure to timely pay taxes for the period November 1999 through September 2000.

6. Taxpayer's protest of the Section 540 (b)(1) penalties should be denied.

7. Taxpayer's protest of the Section 540 (b)(2) penalties should be granted.

ORDER

It is therefore ordered that the November 13, 2001, as filed on January 15, 2002, protest request of Taxpayer should be denied in part and granted in part.

It is further ordered that the City of Phoenix shall revise its tax assessment issued to Taxpayer by eliminating any penalty pursuant to Section 14-540 (b)(2).

It is further ordered that this decision shall be effective immediately.

Dated: April 1, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer